AF/2837

PATENT

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Oct. 15, 2007 — Date

Joanne Bourguignon

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Mark E. Phillips et al.
Application No.:	09/975,748
Filed:	October 10, 2001
Title:	SYSTEM AND METHOD FOR MUSICAL PLAYLIST SELECTION IN A PORTABLE AUDIO DEVICE
Examiner:	Marlon T. Fletcher
Art Unit:	2837
Docket No.:	35073.001
Date :	October 15, 2007

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
ATTENTION: Board of Patent Appeals and Interferences

APPEAL BRIEF TRANSMITTAL AND
EXTENSION OF TIME

Sir:

Transmitted herewith, is the Appeal Brief in this application, with respect to the Notice of Appeal filed on June 14, 2007. The Commissioner is hereby authorized to charge the fee of $255 for filing this Appeal Brief to Deposit Account No. 50-2976.

Please extend the period of response for Application No. 09/975,748 for two months, from August 14, 2007 to October 14, 2007. The Commissioner is hereby also authorized to charge the two month extension fee of $230 to Deposit Account No. 50-2976.

The Commissioner is hereby authorized to charge any fees in conjunction with this communication or to credit any overpayment to Deposit Account No. 50-2976. At anytime during the pendency of this application, please charge any fees required or credit any overpayment to Deposit Account No. 50-2976 pursuant to 37 CFR 1.25. Additionally, please

charge any fees to Deposit Account No. 50-2976 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. This notice is being submitted in duplicate.

Respectfully submitted,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

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APPEAL BRIEF

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Sir:

This appeal is from the decision of the Examiner, in an Office Action mailed March 15, 2007, finally rejecting claims 1-5 and 7-20 and objecting to claim 6.

REAL PARTY IN INTEREST

The real party in interest is Mark E. Phillips, 720 Third Ave., Suite 1100, Seattle, WA 98104.

RELATED APPEALS AND INTERFERENCES

Applicant's representative has not identified, and does not know of, any other appeals of interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-5 and 7-20 and objected claim 6 are pending in the application. Claims 1-5 and 7-20 and objected claim 6 were finally rejected in the Office Action dated March 15, 2007. Applicants' appeal the final rejection of claims 1-5 and 7-20 which are copied in the attached CLAIMS APPENDIX.

STATUS OF AMENDMENTS

No Amendment After Final is enclosed with this brief. The last Amendment was filed May 4, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

Claim 1 is directed to a system for the display and control of music selection in a hand-held portable multi-media device (Current Application, page 3, lines 2-9). The system includes: (1) a housing (150 in Figure 2) sized to be held by a user; (2) a circuit board ((Current Application, page 8, lines 8-12) within the housing; (3) a battery power supply (132 in Figure 1) to provide electrical power to electrical circuitry on the circuit board; (4) a data structure (Current Application, page 7, lines 26-28) to store a plurality of music data files, each music selection data file having identification data associated therewith; (5) a display (108 in Figure 2) to display data comprising a playlist (184 in Figure 4) indicating music data files to be played; (6) an input device (110 in Figure 2) operable by the user to select identification data associated with desired music data files for the playlist; (7) a processor (102 in Figure 1) responsive to the input device to select the music data files for the playlist based on the user selected identification data; (8) a CODEC (114 in Figure 1) to receive the selected music data files and convert the selected music data files to audio data; and (9) an audio output driver (Current Application, page 6, lines 5-11) coupled to the CODEC to receive the audio data therefrom, the audio output driver further having an output and providing analog signals to the output for connection to an audio output device.

Dependent Claims 2-11

Claim 2 is directed to the system of claim 1 wherein the data structure contains music data files having different data format types (Current Application, page 5, lines 13-28). Claim 3 is directed to the system of claim 1 wherein the data associated with the stored music data files comprises song names and the display displays the song names, the user manually generating the playlist (184 in Figure 4) by operating the user input device to select song names and the processor generating the playlist based on the selected song names. Claim 4 is directed to the system of claim 1 wherein the data associated with the stored music data files comprises metatags (Current Application, page 13, line 19 - page 14, line 28) and the display displays the metatags, the user generating the playlist (184 in Figure 4) by operating the user input device to select metatags and the processor generating the playlist based on the selected metatags. Claim 5 is directed to the system of claim 1, further comprising an associated data structure wherein the associated data comprises a plurality of data types (Current Application, page 5, lines 13-28), the processor analyzing the music data file to determine one or more associated data types and storing each of the data types for each music data file in the associated data structure in association with the music data file. Claim 6 is directed to the system of claim 5 wherein the processor selects the music data files for the playlist (184 in Figure 4) by generating an indicator to indicate a storage location in the associated data structure for an associated data type for each of the selected music data files. Claim 7 is directed to the system of claim 1 wherein the associated data comprises a plurality of data types and the user selects a desired data type using the user input device, the display displaying the user-selected data type associated with each of the plurality of music data files (Current Application, page 13, line 19 page 15, line 13). Claim 8 is directed to the system of claim 1 wherein the associated data comprises a plurality of data types and the display displays all associated data types for a user-selected one of the music data files (Current Application, page 13, line 19 page 15, line 13). Claim 9 is directed to the system of claim 1, further comprising a selection data structure wherein the playlist (184 in Figure 4) is stored for subsequent use. Claim 10 is directed to the system of claim 1 wherein the processor alters the stored playlist (184 in Figure 4) and wherein the altered playlist is stored for subsequent use. Claim 11 is directed to the system of claim 1 wherein the processor is responsive to the input device to select music data files based on user-selection of a plurality of identification

data associated with the music data files (Current Application, page 13, line 19 page 15, line 13).

Independent Claim 12

Claim 12 is directed to method for the automatic control of music selection in a hand-held portable multi-media device (Current Application, page 3, lines 2-9). The method includes: (1) storing a plurality of music data files, each music selection data file having identification data associated therewith (Current Application, page 7, line 26 - page 8, line 3); (2) sensing user operation of an input device to select identification data associated with desired music data files for the playlist (Current Application, page 9, line 16 - page 12, line 3); (3) selecting a portion of the music data files to generate the playlist based on the user selected identification data (Current Application, page 15, line 24 - page 19, line 17); (4) processing the selected music data files with a CODEC to convert the selected music data files to audio data (Current Application, page 4, line 17 - page 6, line 7); and (5) providing the audio data to an output for connection to an audio output device (Current Application, page 6, lines 5-11).

Dependent Claims 13-17

Claim 13 is directed to the method of claim 12 wherein the music data files have different data format types (Current Application, page 5, lines 13-28). Claim 14 is directed to the method of claim 12 wherein the data associated with the stored music data files comprises song names, the method further comprising displaying the song names and sensing user-operation of the input device to manually generate the playlist (184 in Figure 4) by operating the user input device to select song names wherein selecting comprises generating the playlist based on the selected song names. Claim 15 is directed to the method of claim 12 wherein the data associated with the stored music data files comprises metatags (Current Application, page 13, line 19 - page 14, line 28), the method further comprising displaying the metatags and sensing user-operation of the input device to select metatags wherein selecting comprises generating the playlist (184 in Figure 4) based on the selected metatags. Claim 16 is directed to the method of claim 12 wherein the associated identification data comprises a plurality of data types, the method further comprising analyzing the music data file to determine one or more associated data types and storing each

of the data types for each music data file in association with the music data file (Current Application, page 5, lines 13-28). Claim 17 is directed to the method of claim 12, further comprising sensing user input to select a plurality of identification data wherein selecting music data files is based on the user-selected plurality of identification data associated with the music data files (Current Application, page 5, lines 13-28).

Independent Claim 18

Claim 18 is directed to a computer-readable media that causes a processor to control of music selection in a hand-held portable multi-media device (Current Application, page 3, lines 2-9) by performing the steps of: (1) storing a plurality of music data files, each music selection data file having identification data associated wherewith (Current Application, page 7, line 26 - page 8, line 3); (2) sensing user operation of an input device to select identification data associated with desire music data files for the playlist (Current Application, page 9, line 16 - page 12, line 3); (3) selecting a portion of the music data files to generate the playlist (184 in Figure 4) based on the user selected identification data (Current Application, page 15, line 24 - page 19, line 17); (4) processing the selected music data files with a CODEC to convert the selected music data files to audio data (Current Application, page 4, line 17 - page 6, line 7); and (5) providing the audio data to an output for connection to an audio output device (Current Application, page 6, lines 5-11).

Dependent Claims 19-20

Claim 19 is directed to the computer-readable media of claim 18 wherein the data associated with the stored music data files comprises metatags (Current Application, page 13, line 19 - page 14, line 28), the computer-readable media causing the processor to perform the steps of displaying the metatags and sensing user-operation of the input device to select metatags wherein selecting comprises generating the playlist (184 in Figure 4) based on the selected metatags. Claim 20 is directed to the computer-readable media of claim 18, further causing the processor to sense user input to select a plurality of identification data and select music data files based on the user-selected plurality of identification data associated with the music data files Claim 2 is directed to the system of claim 1 wherein the data structure contains music data files having different data format types (Current Application, page 5, lines 13-28). Claim 3 is directed to the system of claim 1 wherein the data associated

with the stored music data files comprises song names and the display displays the song names, the user manually generating the playlist (184 in Figure 4) by operating the user input device to select song names and the processor generating the playlist based on the selected song names. Claim 4 is directed to the system of claim 1 wherein the data associated with the stored music data files comprises metatags (Current Application, page 13, line 19 - page 14, line 28) and the display displays the metatags, the user generating the playlist (184 in Figure 4) by operating the user input device to select metatags and the processor generating the playlist based on the selected metatags. Claim 5 is directed to the system of claim 1, further comprising an associated data structure wherein the associated data comprises a plurality of data types (Current Application, page 5, lines 13-28), the processor analyzing the music data file to determine one or more associated data types and storing each of the data types for each music data file in the associated data structure in association with the music data file. Claim 6 is directed to the system of claim 5 wherein the processor selects the music data files for the playlist (184 in Figure 4) by generating an indicator to indicate a storage location in the associated data structure for an associated data type for each of the selected music data files. Claim 7 is directed to the system of claim 1 wherein the associated data comprises a plurality of data types and the user selects a desired data type using the user input device, the display displaying the user-selected data type associated with each of the plurality of music data files (Current Application, page 13, line 19 page 15, line 13). Claim 8 is directed to the system of claim 1 wherein the associated data comprises a plurality of data types and the display displays all associated data types for a user-selected one of the music data files (Current Application, page 13, line 19 page 15, line 13). Claim 9 is directed to the system of claim 1, further comprising a selection data structure wherein the playlist (184 in Figure 4) is stored for subsequent use. Claim 10 is directed to the system of claim 1 wherein the processor alters the stored playlist (184 in Figure 4) and wherein the altered playlist is stored for subsequent use. Claim 11 is directed to the system of claim 1 wherein the processor is responsive to the input device to select music data files based on user-selection of a plurality of identification data associated with the music data files (Current Application, page 13, line 19 page 15, line 13).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. The rejection of claims 1-5 and 7-20 under 35 U.S.C. §103(a) as being

unpatentable over Winsky et al., U.S. Patent No. 5,739,451 ("Winsky").

ARGUMENT

In an office action dated March 15, 2007 ("Office Action"), the Examiner rejected claims 1-5 and 7-20 under 35 U.S.C. §103(a) as being unpatentable over Winsky, and conditionally allowed claim 6. Although Appellant is grateful for the conditional allowance of claim 6, Appellant nonetheless continues to traverse the 35 U.S.C. §103(a) rejections of claims 1-5 and 7-20.

ISSUE 1

1. The rejection of claims 1-5 and 7-20 under 35 U.S.C. §103(a) as being unpatentable over Winsky.

Appellant's traversal of the 35 U.S.C. §103(a) rejections of claims 1-5 and 7-20 is quite straightforward. The currently claimed invention is directed to a system and method for cataloging and creating playlists of audio data files for play on portable audio devices. An external view of a portable audio device in which embodiments of the present invention are applied is shown in Figure 2, and a block diagram of the portable audio device is shown in Figure 1.

The current invention is directed to creation, storage, retrieval, display, and playing of sets of musical files represented by playlists. A playlist is essentially a list of identifiers that identify a set of audio files that may be played sequentially, or played in some other order, upon user selection of a particular playlist for rendering by the portable audio device. Figure 4 of the current application illustrates a playlist displayed on a display device incorporated within a portable audio device. A description of the screen display (182 in Figure 4) that displays a selected playlist is provided in the current application beginning on line 16 of page 9 and extending to line 26 of page 12. As stated in the current application, beginning on line 20 of page 9:

> The user may simply activate the playlist to play musical tracks in a predetermined sequence shown in a playlist by pressing the selection control button 174. When a display list is first shown on the display 108, the first entry in the playlist may be automatically selected and indicated using, by way of example, reverse video.

Playlists are further described beginning on line 24 of page 15:

> If the user has selected the jukebox function, the result of decision 304 is YES. In that event, the system 100 queries the data structure 134 and extracts the titles of all existing playlists and, in step 308, the existing playlists are shown on the display 108 (see Figure 1). In decision 310, the system 100 determines whether the user has activated one or more buttons to select a playlist. If the user has selected a playlist for play, the result of decision of 310 is YES and, in step 312, the system plays the selected playlist by transferring data from the buffer 124 (or the memory 104) to the CODEC 114 in a conventional fashion. As previously noted, the musical tracks of the selected playlist may be played sequentially in the sequence originally specified by the user when creating the playlist, in a new sequence specified by the user at the present time, or in some other fashion, such as random selection.

The word "playlist" appears multiple times in claim 1, appears multiple times in claim 12, and appears multiple times in claim 18. Claims 1, 12, and 18 are the three independent claims in the current claim set.

According to M.P.E.P. §2143:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

Winsky does not teach, disclose, mention, or suggest playlists or playlist-based interfaces for portable audio devices that render audio files for listening by users of the devices. Instead, Winsky discloses a hand-held electronic music encyclopedia which stores snippets and selections of various songs, and provides an interface to allow a user to attempt to identify one particular song based on a title, lyrics, relative note or pitch values, and other information. Appellant's representative has read Winsky several times, and cannot find a single teaching, mention, or suggestion in Winsky that a user of Winsky's portable music encyclopedia can create a playlist and select a playlist for play by the electronic music encyclopedia. This is not surprising, since the electronic music encyclopedia is designed to allow a user to identify one particular song based on various criteria, rather than as a music-playing device. In addition, Winsky's electronic music encyclopedia may also be used as a kind of a music-based game consol. However, none of the games involve selecting and playing a list of audio files or musical compositions. In certain games, a user may select an item from a displayed list, but in no case, in Winsky, can a use specify that a list of musical

compositions or audio files be played sequentially or in any other order.

The term "playlist" is a well-understood and well-recognized term in the field of audio-file-rendering devices, such as the Apple iPod® device. Had Winsky intended the portable music encyclopedia to be used as a portable audio device, Winsky would undoubtedly have discussed or mentioned interfaces for specifying playlists and selecting playlists for rendering. However, Winsky does not one use the term "playlist."

In rejecting claims 1, 12, and 18, the Examiner has not pointed to any passage or figure in Winsky that describes, depicts, or even remotely suggests a playlist. For example, for the element "a processor responsive to the input device to select the music data files for the playlist based on the user-selected identification data," the Examiner cites lines 60-64 of column 4 of Winsky. These lines of Winsky are provided below:

> Display control module 58 is also connected at a data input to a note structure comparator 62. Comparator 62 is connected to an input to keyboard 14 for receiving therefrom note structure data input by a user for purposes of researching and ultimately identifying a song.

Nothing in this cited passage even remotely suggests a playlist comprising a list of musical selections to be played by a portable audio device. Instead, this passage of Winsky describes a keyboard for receiving note structure data in order to research and ultimately identify a single song or musical composition. For the claim element "a display to display data comprising a playlist indicating music data files to be played," the Examiner provides no citation to Winsky. For the element "a processor responsive to the input device to select the music data files for the playlist based on the user-selected identification data," the Examiner cites a block 50 in Figure 3 of Winsky that represents a microprocessor and cites lines 2-5 of column 4, which state:

> Alternatively, the reproducible music segments can be stored in digitized form, convertible by a digital-to-analog converter (not shown).

Obviously, these cited portions of Winsky have nothing whatsoever to do with playlists.

The title of the current application is "System And Method For Musical Playlist Selection In A Portable Audio Device." The technical field section of the current application states: "The present invention is related generally to portable audio devices and, more particularly, to a system and method for cataloging and creating playlists of audio data files." Clearly, the many occurrences of the term "playlist" in the current claims, and the extensive discussion in the current application with regard to playlist creation, storage,

retrieval, and rendering of audio files contained within playlists, are not coincidental. Winsky does not one mention the word "playlist," and contains no disclosure, teaching, mention, or even suggestion of anything related to playlists. By contrast, Winsky is not a portable music player, but is, instead, a portable music encyclopedia and music-related game platform that stores only small segments, or snippets, of songs and musical compositions. These snippets are used in order to facilitate identification of particular songs. Because Winsky only stores portions of songs, it is not at all surprising that Winsky would not contemplate providing playlists. People generally do not want to hear sequences of small portions of songs. Winsky's portable music encyclopedia is directed to a fundamentally different field than the portable audio players in which the system and method embodiments of the present invention can be practiced.

The Examiner cannot simply ignore the term "playlist" in the current claims. The concept of a playlist is central to the currently claimed subject matter. Winsky's portable music encyclopedia is unrelated to the portable audio players in which method and system embodiments of the present invention may be practiced, and Winsky's disclosure makes no mention or suggestion of anything related to playlists of any kind.

Furthermore, as the Examiner must certainly know: "A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled." Amgen, Inc. v. Hoechst Marion Roussel, Inc., 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003). See Bristol-Myers Squibb v. Ben Venue Laboratories, Inc., 246 F.3d 1368, 1374, 58 USPQ2d 1508, 1512 (Fed. Cir. 2001) ("To anticipate the reference must also enable one of skill in the art to make and use the claimed invention."); PPG Industries, Inc. v. Guardian Industries Corp., 75 F.3d 1558, 1566, 37 USPQ2d 1618, 1624 (Fed. Cir. 1996) ("To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter."). Winsky cannot possibly enable playlists in portable devices if Winsky does not even mention playlists.

CONCLUSION

The current application and current claims are directed to creation and use of playlists on portable music-playing devices. Winsky does not teach, mention, or even suggest playlists. Winsky's disclosed device is not designed as a music-playing device for

playing songs and other musical compositions, but is instead designed as a music encyclopedia and game platform. Winsky does not anticipate any of the current claims.

Applicant respectfully submits that all statutory requirements are met and that the present application is allowable over all the references of record. Therefore, Applicant respectfully requests that the present application be passed to issue.

Respectfully submitted,
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CLAIMS APPENDIX

1. (original) A system for the display and control of music selection in a hand-held portable multi-media device, the system comprising:

a housing sized to be held by a user;

a circuit board within the housing;

a battery power supply to provide electrical power to electrical circuitry on the circuit board;

a data structure to store a plurality of music data files, each music selection data file having identification data associated therewith;

a display to display data comprising a playlist indicating music data files to be played;

an input device operable by the user to select identification data associated with desired music data files for the playlist;

a processor responsive to the input device to select the music data files for the playlist based on the user selected identification data;

a CODEC to receive the selected music data files and convert the selected music data files to audio data; and

an audio output driver coupled to the CODEC to receive the audio data therefrom, the audio output driver further having an output and providing analog signals to the output for connection to an audio output device.

2. (original) The system of claim 1 wherein the data structure contains music data files having different data format types.

3. (original) The system of claim 1 wherein the data associated with the stored music data files comprises song names and the display displays the song names, the user manually generating the playlist by operating the user input device to select song names and the processor generating the playlist based on the selected song names.

4. (original) The system of claim 1 wherein the data associated with the stored music data files comprises metatags and the display displays the metatags, the user generating

the playlist by operating the user input device to select metatags and the processor generating the playlist based on the selected metatags.

5. (original) The system of claim 1, further comprising an associated data structure wherein the associated data comprises a plurality of data types, the processor analyzing the music data file to determine one or more associated data types and storing each of the data types for each music data file in the associated data structure in association with the music data file.

6. (original) The system of claim 5 wherein the processor selects the music data files for the playlist by generating an indicator to indicate a storage location in the associated data structure for an associated data type for each of the selected music data files.

7. (original) The system of claim 1 wherein the associated data comprises a plurality of data types and the user selects a desired data type using the user input device, the display displaying the user-selected data type associated with each of the plurality of music data files.

8. (original) The system of claim 1 wherein the associated data comprises a plurality of data types and the display displays all associated data types for a user-selected one of the music data files.

9. (original) The system of claim 1, further comprising a selection data structure wherein the playlist is stored for subsequent use.

10. (original) The system of claim 1 wherein the processor alters the stored playlist and wherein the altered playlist is stored for subsequent use.

11. (original) The system of claim 1 wherein the processor is responsive to the input device to select music data files based on user-selection of a plurality of identification data associated with the music data files.

12. (original) A method for the automatic control of music selection in a hand-held portable multi-media device, the method comprising:

storing a plurality of music data files, each music selection data file having identification data associated therewith;

sensing user operation of an input device to select identification data associated with desired music data files for the playlist;

selecting a portion of the music data files to generate the playlist based on the user selected identification data;

processing the selected music data files with a CODEC to convert the selected music data files to audio data; and

providing the audio data to an output for connection to an audio output device.

13. (original) The method of claim 12 wherein the music data files have different data format types.

14. (original) The method of claim 12 wherein the data associated with the stored music data files comprises song names, the method further comprising displaying the song names and sensing user-operation of the input device to manually generate the playlist by operating the user input device to select song names wherein selecting comprises generating the playlist based on the selected song names.

15. (original) The method of claim 12 wherein the data associated with the stored music data files comprises metatags, the method further comprising displaying the metatags and sensing user-operation of the input device to select metatags wherein selecting comprises generating the playlist based on the selected metatags.

16. (original) The method of claim 12 wherein the associated identification data comprises a plurality of data types, the method further comprising analyzing the music data file to determine one or more associated data types and storing each of the data types for each music data file in association with the music data file.

17. (original) The method of claim 12, further comprising sensing user input to select a plurality of identification data wherein selecting music data files is based on the user-selected plurality of identification data associated with the music data files.

18. (original) A computer-readable media that causes a processor to control of music selection in a hand-held portable multi-media device by performing the steps of:

storing a plurality of music data files, each music selection data file having identification data associated wherewith;

sensing user operation of an input device to select identification data associated with desire music data files for the playlist;

selecting a portion of the music data files to generate the playlist based on the user selected identification data;

processing the selected music data files with a CODEC to convert the selected music data files to audio data; and

providing the audio data to an output for connection to an audio output device.

19. (original) The computer-readable media of claim 18 wherein the data associated with the stored music data files comprises metatags, the computer-readable media causing the processor to perform the steps of displaying the metatags and sensing user-operation of the input device to select metatags wherein selecting comprises generating the playlist based on the selected metatags.

20. (original) The computer-readable media of claim 18, further causing the processor to sense user input to select a plurality of identification data and select music data files based on the user-selected plurality of identification data associated with the music data files.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.